

**RESOLUTION NO. 2007-1791**

**A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA, AWARDED A CONTRACT FOR PROFESSIONAL CONSULTING SERVICES BY CAVIN, GIORDANO & ASSOCIATES, INC TO ACT AS THE TOWN'S PLANNING, ENGINEERING, BUILDING AND CODE COMPLIANCE FIRM (REQUEST FOR QUALIFICATIONS TO PROVIDE GENERAL CONSULTING ENGINEERING, PLANNING, BUILDING AND CODE COMPLIANCE SERVICES ISSUED: MAY 10, 2007) (THE "RFQ") (THE "PROJECT") ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR IMPLEMENTATION OF AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE;**

**WHEREAS**, pursuant to Section 287.055, Florida Statutes, the Town of Surfside ("Town") requested qualifications from consulting firms to act as the Town's Consulting, Planning, engineering, building and code compliance firm (Request for Qualifications to Provide these Services issued: May 10, 2007) (the "RFQ");

**WHEREAS**, the Town has considered the proposals submitted in response to the RFQ and has determined Calvin, Giordano and Associates, Inc ("Calvin Giordano") is the lowest most responsible and responsive bidder in accordance with the applicable codes and ordinances of the Town; and

**WHEREAS**, Calvin Giordano has agreed to enter into the Agreement attached hereto as Exhibit "A," with the Town to perform and furnish all work as specified in the RFQ including but not limited to planning, GIS support/implementation of a system, redevelopment efforts, disaster recovery, landscape architecture, engineering, building including plan review, field inspections, on-call services and a qualified Building Official, code compliance services (Professional Services") and in some instances,

because of a variety of intervening and unforeseen circumstances, Calvin Giordano has already untaken to provide these services in the absence of a contract; and

**WHEREAS**, the Town Commission has determined that it is in the best interests of the Town to enter into the Agreement attached hereto as Exhibit "A" with Calvin, Giordano to perform the services as set forth therein and thus ratifies both the prior services as performed by Calvin, Giordano and hereby authorizes the Town Manager to pay for that work as if this in agreement had been in full force and effect at that time.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

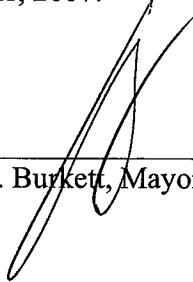
**Section 1.**     **Recitals Adopted.**     That each of the above stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2.**     **Agreement Approved.**     The Agreement, attached hereto as Exhibit "A" between the Town and Calvin, Giordano is hereby approved, and the Town Mayor is hereby authorized to execute the Agreement, on behalf of the Town, once approved as to form and legal sufficiency by the Town Attorney.

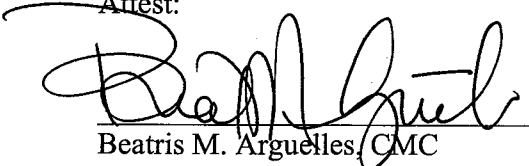
**Section 4.**     **Implementation.**     The Town Manager is hereby authorized to take all action necessary to implement this Resolution and the Agreement in accordance with the terms, conditions and purposes of this Resolution and the Agreement. Payment for any services performed by Calvin Giordano prior to the date of this resolution is hereby ratified after the fact.

**Section 5.**     **Effective Date.**     That this Resolution shall be effective immediately upon adoption.

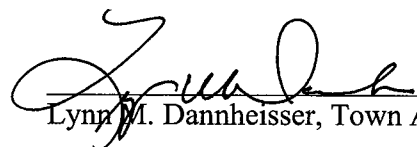
**PASSED and ADOPTED** on this 13th day of November, 2007.

  
\_\_\_\_\_  
Charles W. Burkett, Mayor

Attest:

  
\_\_\_\_\_  
Beatris M. Arguelles, CMC  
Town Clerk

**APPROVED AND TO FORM AND  
LEGAL SUFFICIENCY:**

  
\_\_\_\_\_  
Lynn M. Dannheisser, Town Attorney

Ordinance No. \_\_\_\_\_

Original given  
to Phil Manton  
to have Dennis  
Sign. 11/29/07

# AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

TOWN OF SURFSIDE, FLORIDA

AND

CALVIN, GIORDANO & ASSOCIATES, INC.

**THIS AGREEMENT** is made and entered into this 13<sup>th</sup> day of Nov., 2007, by and between the TOWN OF SURFSIDE, a Florida municipal corporation (the "TOWN"), and CALVIN, GIORDANO & ASSOCIATES, INC., a Florida corporation (the "CONTRACTOR").

**WHEREAS**, the TOWN is in need of a qualified consulting firm to act as the Town's Consulting, Planning, Engineering, Building and Code Compliance firm in a continuing contract for services, including but not limited to planning; GIS support/implementation of system; redevelopment efforts; disaster recovery; landscape architecture; engineering; building, including plan review, field inspections, on-call services and qualified Building Official; and code compliance services to include the provision of qualified Code Compliance Officers ("Professional Services"); and

**WHEREAS**, the TOWN, pursuant to a Request for Qualifications selected CONTRACTOR to perform the aforementioned services as an independent contractor to TOWN; and

**WHEREAS**, Calvin, Giordano & Associates, Inc., performs these services for many governmental entities, including other municipalities, and has offered to provide high-level services to the TOWN for a reasonable cost; and

**WHEREAS**, the TOWN and CONTRACTOR desire to enter into an agreement setting forth the terms and conditions upon which the aforementioned Professional Services will be provided by CONTRACTOR; and

**WHEREAS**, TOWN has followed the selection and negotiation process for all services that require compliance with the Florida Consultant's Competitive Negotiation Act (CCNA) (Chapter 287.055, Florida Statutes), as amended.

**NOW THEREFORE**, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

## SECTION 1. INCORPORATION, CONVENIENCE AND INTENT

The foregoing recitations are true and correct and are hereby incorporated by reference. The parties acknowledge that professional engineering services, landscape architect services and surveying services all fall within the requirements of the Florida Consultant's Competitive Negotiation Act (CCNA), Chapter 287.005, Florida Statutes. The parties further acknowledge that for purposes of contract preparation and convenience, non-CCNA and CCNA services have been combined. As used in this Agreement, Professional Services, shall mean all services that CONTRACTOR is required to provide herein.

## **SECTION 2. SCOPE OF SERVICES.**

The CONTRACTOR shall perform Professional Services for the TOWN consisting of the following: community development, planning & zoning, landscape architecture, general and municipal engineering, emergency management services and associated miscellaneous services.

### **2.1 PLANNING SERVICES**

#### **2.1.1 Comprehensive Planning**

#### **2.1.2 Community Development Director**

The CONTRACTOR shall provide a Community Development Director to TOWN which shall be responsible for providing the following services:

- Provide information to the general public as it relates to all land development activities within the TOWN.
- Provide information to builders and developers as it relates to policies and procedures within the TOWN relative to land planning within the TOWN.
- Oversee the development, maintenance and updating of land use and zoning maps as required by local and state agencies.
- Attend all staff meetings, all Town Commission meetings and any workshops, at which attendance by the CONTRACTOR is deemed necessary by the Town Manager and attend all County and State agency meetings and forums as required by the Town Manager and report back to Town Manager regarding meeting agendas, goals and any relevant discussions.
- Supervise and coordinate the building permit process with respect to zoning and fire marshal review.
- Develop, establish and supervise the system for the issuance of certificates of use and occupational licenses.
- Act as liaison between the TOWN, County, South Florida Regional Planning Council and State Department of Community Affairs.
- Develop policies and procedures regarding all planning and zoning activities, and develop schedules and time frames for processing all land development activities (including, but not limited to rezoning).
- Provide information to Town Manager and Town Commissioners on all relevant and applicable planning issues.
- Provide all internal support services attendant to the above.
- Perform any and all related services required by this position.

**Fixed Fee: \$7,500.00 per month**

#### **2.1.3 Planning and Zoning Process**

- Provide all staff services for Planning and Zoning Review Process.
- Provide and maintain a zoning ordinance, related documents and make recommendations the Town Manager regarding amendments to said ordinance.

- Provide and maintain a comprehensive plan and related documents.
- Perform any and all related services required for Planning and Zoning Services.

**Fixed Fee: \$5,000.00 per month**

## **2.2 DESIGN SERVICES (LANDSCAPE ARCHITECTURE)**

- CONTRACTOR shall provide the necessary personnel and equipment for special project design, permitting, inspections, special reports, studies, and other related services as required by the Town Manager on a project-by-project basis, for which CONTRACTOR shall submit a schedule of work to be performed.

**Cost Proposal Hourly Fee:** A cost proposal in the form of a work authorization shall be submitted for each new project to the Town Manager. Any work performed due to the cost proposal shall be based upon CONTRACTOR's lowest hourly fee.

## **2.3 CODE ENFORCEMENT/SPECIAL MASTER PROCESS ADMINISTRATION**

- Provide administrative/management direction and oversight to field code enforcement staff and office support staff.
- Provide management, process and procedures for administration of the Special Master Process.
- Utilize "Inkforce" software system capable of generating and tracking all code violations and scheduling follow-up inspections as necessary. (software licenses and hardware available at additional cost)
- Perform any and all related services required by this position.

**Fixed Fee: \$2,000.00 per month**

## **2.4 BUILDING CODE SERVICES**

- Provide Building Official, Plumbing, Electrical and Mechanical Plan Review and Inspection Services as required the Florida Building Code and Florida Statute
- Web based Building Department Software and support
- Provide Permit Technicians and Permit Administrators
- File Maintenance and organization
- Preparation of and filing of all required forms and documents
- The use of standardized checklists to minimize errors
- Maintenance of quantity and quality control through the utilization of software and comprehensive workflow systems
- Set turn around times for all project types will met, simple single discipline permits two days, single family residence 5 days, larger commercial projects 10 working days
- Expedited Plan Review for clients with scheduling issues.

The utilization of specific checklists for documentation and quality assurance

**2.4.1 User Fee (Permit Fee) Based Compensation.** Users of the Building Code Services Department shall pay Permit Fees and other Related fees according to the Fee Schedule in Exhibit "A". Contractor shall return to the TOWN 10% of the total revenues collected to cover the Town's administrative costs and other costs relating to the enforcement of the Florida Building Code on or about the 15<sup>th</sup> of the following month. The fee schedule may be adjusted annually by Resolution of the Town Commission in an amount equal the increase in the Consumer Price Index (CPI).

## **2.5 COMMUNITY SERVICES**

### **A. Streets, Rights-of-Way and Facilities**

- Contract administration for maintenance of public rights-of-way, landscaping and irrigation systems to provide safe and comfortable common grounds for the residents of TOWN.
- Contract administration for the construction, operation and maintenance of public facilities.
- Contract administration and coordination of sidewalk and streetlight maintenance for all public roadways to ensure safe passage throughout Surfside.
- Contract administration and oversight of the Town's solid waste/sanitation disposal operations.
- Recommend, develop and implement capital improvement plan for the Town.
- Provide contract administration and assist in seeking local, state and federal grants for improvements to the public works within TOWN.
- Perform any and all related services required by the Town Manager.

### **B. General and Municipal Engineering**

- Administer the Town's NPDES/Stormwater Master Plan programs
- Manage traffic ways improvement projects/contracts implemented by the Town
- Oversee the operation and maintenance of water, wastewater, and stormwater utilities
- Perform related services as required by the Town Manager

**Fixed Fee: \$12,000.00 per month**

## **2.6 TOWN WEBSITE**

Host and maintain the Surfside website containing TOWN contact information, statistics, history, departmental and facility descriptions, Commission meeting schedules, meeting agendas, agenda packages, minutes, Town Codes and other data as requested by the Town Manager.

**Fixed Fee: \$1,000 per month for website hosting**

## **2.7 EMERGENCY MANAGEMENT SERVICES**

- Attend emergency management related meetings including the Local Mitigation Strategy Committee, emergency managers meetings, area meetings, and others as directed
- Participate in relevant training and exercises to inject the interests of the TOWN.

- Maintain and update plans, policies and procedures to maintain compliance and ensure rosters, MOUs, and contracts are current
- Monitor legal and regulatory changes impacting the TOWN's emergency management program
- Respond to inquiries regarding emergency management, evacuation and related issues

**Fixed Fee: \$1000 per month**

## **2.8 ADDITIONAL MISCELLANEOUS SERVICES**

In addition to the fee contracts listed above, the CONTRACTOR will also provide additional services on an hourly basis as required by the Town Manager, including, but not limited to, engineering, traffic engineering, landscape architect services, and survey services (CCNA services); as well as any other services requested by the TOWN.

**Hourly Fee: See professional fee schedule attached as Exhibit "A"**

## **SECTION 3. FEES FOR SERVICES**

**3.1** CONTRACTOR shall submit monthly invoices for compensation, but only after the services for which the invoices are submitted have been completed and shall submit with such invoice a detailed breakdown, indicating each task performed, person performing the work and time allocated to each task. This breakdown shall be supplied for all work performed by CONTRACTOR, whether fixed fee or hourly.

**3.2** CONTRACTOR shall assign all work for which there is a cost recovery account to that account, at the hourly rates set forth in Exhibit "A." Any amounts assigned to cost recovery accounts that relate to fixed fee matters will be credited against the fixed fee amounts.

**3.3** TOWN shall pay CONTRACTOR within thirty (30) calendar days of receipt of CONTRACTOR's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement. Payment may be withheld for failure of CONTRACTOR to comply with a term, condition, or requirement of this Agreement.

**3.4** Notwithstanding any provisions of this Agreement to the contrary, TOWN may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by CONTRACTOR. When the above reasons for withholding payments are removed or resolved in a manner satisfactory to TOWN, payment may be made. The amount withheld shall not be subject to payment of interest by TOWN.

**3.5** The fixed fees contained herein are based upon the amount of land development activity that has occurred in the past and will likely occur in the future for a period of three (3) years from the effective date of this Agreement.

**3.6** All fixed and hourly fees will be increased by three percent (3%) on each anniversary date of this Agreement.

## **SECTION 4. TERM/TERMINATION**



**4.1 TERM OF AGREEMENT** – This Agreement shall commence on the date that this agreement is approved by the is fully executed by all parties and shall continue in full force and effect unless and until it is terminated as provided below.

**4.2 TERMINATION – Without Cause** – This Agreement may be terminated by TOWN for any reason or no reason upon thirty (30) calendar days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to receive compensation for any work completed pursuant to this Agreement to the satisfaction of TOWN up through the date of termination. Under no circumstances shall TOWN make payment for services that have not been performed.

**4.3 TERMINATION – With Cause** – This Agreement may be terminated by either party upon five (5) calendar days' written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event CONTRACTOR abandons this Agreement or causes it to be terminated by TOWN, CONTRACTOR shall indemnify TOWN against loss pertaining to this termination, including, but not limited to, reasonable costs incurred in transition to a replacement CONTRACTOR.

**4.4 TERMINATION – Transfer of Ownership** – This Agreement may be terminated by the TOWN upon five (5) calendar days' written notice if there is a change of more than 50% of the ownership of the CONTRACTOR. CONTRACTOR shall notify Town Manager at least ten (10) business days before any such change in ownership of CONTRACTOR.

**4.5** Upon termination, CONTRACTOR shall turn over to TOWN all finished or unfinished work product, documents, data, studies, surveys, sketches, plans and reports in its possession. It shall also reasonably assist the TOWN and any replacement CONTRACTORS in the transition, including taking any acts necessary to allow the transfer of the GIS system.

## **SECTION 5. DEFAULT**

**5.1** An event of default shall mean a breach of this Agreement. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:

- a. CONTRACTOR has not performed services on a timely basis;
- b. CONTRACTOR has refused or failed, except in the case for which an extension of time is provided, to supply enough properly skilled Staff personnel;
- c. CONTRACTOR has failed to obtain the approval of the TOWN where required by this Agreement;
- d. CONTRACTOR has refused or failed, except in the case for which an extension of time is provided, to provide the Services as defined in this Agreement.

**5.2.** In the event CONTRACTOR fails to comply with the provisions of this Agreement, the TOWN may declare the CONTRACTOR in default and notify the CONTRACTOR in writing. In the event payment has been made for such professional services not completed, the CONTRACTOR shall return these sums to the TOWN within ten (10) days after notice that these sums are due. Nothing in this Article shall limit the TOWN's right to terminate, at any time, pursuant to Section 4 above, and its right for damages under Section 5.3.

**5.3.** In an Event of Default by the CONTRACTOR, it shall be liable for all damages resulting from the default.

5.4. The TOWN may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by the TOWN. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The TOWN's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to the TOWN in law or in equity.

## **SECTION 6. STATUS REPORTS AND UPDATES**

On or before the first day of every month, CONTRACTOR shall prepare and deliver to the Town Manager status reports showing the status of all pending work authorizations and projects related to this Agreement.

## **SECTION 7. HOURS OF OPERATION**

CONTRACTOR shall maintain fully staffed business hours equal to, but not less than, the Town's business hours of 8 AM to 5 PM, Monday through Friday, with the following holidays accepted:

New Year's Day  
Martin Luther King, Jr. Birthday  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Veteran's Day  
Thanksgiving Day  
Day After Thanksgiving Day  
Christmas Day

## **SECTION 8. POLICY OF NON-DISCRIMINATION**

CONTRACTOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. CONTRACTOR shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

## **SECTION 9. DRUG FREE WORKPLACE**

CONTRACTOR shall maintain a Drug Free Workplace.

## **SECTION 10. INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent contractor under this Agreement. Personal services provided by CONTRACTOR shall be by employees of CONTRACTOR and subject to supervision by CONTRACTOR, and not as officers or employees of TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR.

## **SECTION 11. ASSIGNMENT**

Neither this Agreement, nor any interest herein, shall be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR, without the prior written consent of the Town Manager.

## **SECTION 12. CONFLICTS OF INTEREST**

**12.1** CONTRACTOR shall not perform any services for any private sector clients (including, but not limited to, developers, corporations, real estate investors, etc.) on projects within the jurisdictional boundaries of the TOWN.

**12.2** CONTRACTOR acknowledges that, in the course of performing the services, it may originate, develop, receive or otherwise become aware of knowledge and information concerning the TOWN and its plans and that all such knowledge and information, whether oral or written which is developed or acquired by, or communicated or delivered to CONTRACTOR or of which CONTRACTOR may otherwise become aware are and shall be and remain the confidential information of the TOWN ("Confidential Information"), unless otherwise deemed "public" by law. The CONTRACTOR will not use or disclose any information concerning a recipient of services under this Agreement for any purpose not in conformity with state statute and applicable federal regulations. CONTRACTOR further acknowledges that, in the course of performing the services, it may have access to certain other information that relates, directly or indirectly, to the TOWN or its agents, statistical, business or technical research, development, trade secrets, processes, formulae, specifications, programs, software packages, technical know-how, methods and procedures of operation, business or confidential plans ("Proprietary Information"). CONTRACTOR affirms that it will not disclose such information and that if it determines that there could be a conflict, or potential conflict of interest, CONTRACTOR and/or its agents will immediately advise the Town Manager.

**12.3** CONTRACTOR shall not review or perform any services regarding any application made by any client of CONTRACTOR, even if the services CONTRACTOR performs for such client are unrelated to the TOWN. In such instance, CONTRACTOR shall disclose the relationship immediately to the Town Manager, who may retain an alternate CONTRACTOR for those services. If the services relate to a fixed fee service, the fees for the alternate CONTRACTOR shall be deducted from the fixed fee paid to CONTRACTOR.

**12.4** Neither CONTRACTOR nor any of its employees shall have or hold any employment or contractual relationship that is antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

**12.5** CONTRACTOR shall immediately notify TOWN if any public records are requested of CONTRACTOR and/or if issues are discovered by CONTRACTOR that may adversely impact TOWN.

**12.6** CONTRACTOR further agrees to use best efforts to maintain open, honest and direct communication with the Town Manager and Town Attorney in the performance of services required pursuant to this Agreement.

### **SECTION 13. INDEMNIFICATION**

**13.1** CONTRACTOR shall indemnify, defend and hold harmless TOWN, its officials, appointed officers, agents, employees, and volunteers from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting there from, arising out of any errors, omissions, misconduct or negligent acts, errors or omissions of CONTRACTOR, its officials, agents, employees or subcontractors in the performance of the services of CONTRACTOR under this Agreement.

**13.2** CONTRACTOR acknowledges that specific consideration has been paid or will be paid under this Agreement for this hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 14, Insurance.

**13.3** CONTRACTOR shall indemnify TOWN for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement by CONTRACTOR of any patent, trademark, copyright, trade secret or other proprietary right relating to services furnished pursuant to this Agreement. CONTRACTOR will defend and/or settle at its own expense any action brought against the TOWN to the extent that it is based on a claim that products or services furnished to TOWN by CONTRACTOR pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service becomes unusable as a result of any such infringement or claim.

### **SECTION 14. INSURANCE**

**14.1** The CONTRACTOR shall not commence work under this Agreement until CONTRACTOR has obtained all insurances required pursuant to the Request for Qualifications. Proof of all insurance policies shall be approved by the Town Manager. CONTRACTOR shall not allow any Subcontractor to commence work on its sub-contract until all similar such insurance required of the subcontractor has been obtained and approved.

**14.2** CONTRACTOR shall at all times carry professional liability insurance, workers' compensation insurance, comprehensive general liability insurance, and automotive liability insurance with the policy limits outlined below:

- Workers' Compensation Insurance – as required by law.
- Employer's Liability Insurance - \$1,000,000 per occurrence.
- Professional Liability Insurance – \$1,000,000 per occurrence, \$5,000,000 aggregate or dedicated project limits with a deductible (if applicable) not to exceed \$100,000.00 per claim.

- Automobile Liability Insurance - \$500,000 per occurrence, \$500,000 per accident for bodily injury and \$500,000 per accident for property damage.

The successful proposer(s) must submit, prior to signing of contract, a Certificate of Insurance naming the TOWN of Surfside as additional insured and deductibles for each coverage at amounts approved by the Town Manager. CONTRACTOR shall be responsible for maintaining this professional liability insurance for a minimum of three (3) years from the date of execution of this Agreement. Upon request of TOWN, CONTRACTOR shall make available for inspection copies of any claims filed or made against any policy during the policy term. CONTRACTOR shall additionally notify TOWN, in writing, within thirty (30) calendar days, of any claims filed or made against any policy in excess of \$250,000 during the policy term. The Town Manager may require any other insurance coverage it deems necessary depending upon the exposures.

**14.3** Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Town Manager or designee prior to the commencement of the work. These Certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least thirty days (30) prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do business under the laws of the State of Florida, with financial ratings acceptable to the Town Manager. The TOWN shall be named as an additional insured on all insurance policies.

**14.4** In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONTRACTOR shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

## **SECTION 15. REPRESENTATIVE OF TOWN AND CONTRACTOR**

**15.1** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager or his designee as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. CONTRACTOR designates George Keller as the representative of CONTRACTOR to whom all communications pertaining to the day-to-day action of this Agreement shall be addressed.

**15.2** The parties recognize that George Keller's long history with CONTRACTOR and the South Florida community is a material inducement to the TOWN entering into this Agreement. Accordingly, unless excused by the Town Manager, George Keller shall personally attend weekly staff meetings and all regular Commission Meetings.

**15.3** The Town Manager shall have the right to require CONTRACTOR to change any personnel working on TOWN projects upon providing CONTRACTOR with a ten (10) day written notice.

## **SECTION 16. COSTS AND ATTORNEY'S FEES**

If either TOWN or CONTRACTOR is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to, costs and reasonable attorney's fees.

## **SECTION 17. NOTICES**

Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand delivered or by facsimile transmission with proof of receipt, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the parties designate the following as the respective places for giving of notice:

**FOR CONTRACTOR:**

Dennis J. Giordano, President  
Calvin, Giordano & Associates, Inc.  
1800 Eller Drive, Suite 600  
Fort Lauderdale, Florida 33316  
Telephone: (954) 921-7791  
Facsimile: (954) 921-8807

**FOR TOWN:**

**W.D. Higginbotham**, Town Manager  
Town of Surfside  
9293 Harding Street  
Surfside, Florida 33154  
Telephone: (305) 993-1051  
Facsimile: (305) 993-5097

With Copy to:

**Lynn Dannheisser, Esq.**  
Town Attorney  
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, FL 33134  
Telephone: (305) 854-0800  
Facsimile: (305) 854-2323

## **SECTION 18. RIGHTS IN DATA; COPYRIGHTS; DISCLOSURE**

**18.1 Definition.** The term "Data" as used in this Agreement includes written reports, studies, drawings, or other graphic, electronic, chemical or mechanical representation.

**18.2 Rights in Data.** Drawings, specifications, designs, models, photographs, computer CADD discs, reports, surveys and other data developed or provided in connection with this Agreement shall be the property of TOWN and TOWN shall have the full right to use such data for any official purpose permitted under Florida Statutes, including making it available to the general public. Such use shall be without any additional payment to or approval by CONTRACTOR. TOWN shall have unrestricted authority to publish, disclose distribute and otherwise use, in whole or in part, any data developed or prepared under this Agreement.

**18.3 Copyrights.** No data developed or prepared in whole or in part under this Agreement shall be subject to copyright in the United States of America or other country, except to the extent such

copyright protection is available for the Town. CONTRACTOR shall not include in the data any copyrighted matter unless CONTRACTOR obtains the written approval of the Town Manager and provides said Town Manager with written permission of the copyright owner for CONTRACTOR to use such copyrighted matter in the manner provide herein.

**18.4** If this Agreement is terminated for any reason prior to completion of the work, the TOWN may, in its discretion, use any design and documents prepared hereunder.

## **SECTION 19. SUBCONTRACTORS**

Subcontractors, if needed, shall be subject to the prior written approval of the Town Manager.

## **SECTION 20. COMPLIANCE WITH LAWS**

CONTRACTOR shall fully obey and comply with all laws, ordinances and administrative regulations duly made in accordance therewith, which are or shall become applicable to the services performed under the terms of this Agreement.

## **SECTION 21. TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

## **SECTION 22. OWNERSHIP OF DOCUMENTS**

CONTRACTOR understands and agrees that any information, document, report or any other material whatsoever which is given by the TOWN to CONTRACTOR or which is otherwise obtained or prepared by CONTRACTOR under the terms of this Agreement is and shall at all times remain the property of the TOWN. CONTRACTOR agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of the Town Manager, which may be withheld or conditioned by the Town Manager in his sole discretion.

## **SECTION 23. AUDIT AND INSPECTION RIGHTS**

**23.1** The TOWN may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by CONTRACTOR under this Agreement, audit, or cause to be audited, those books and records of CONTRACTOR that are related to CONTRACTOR's performance under this Agreement. CONTRACTOR agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement.

**23.2** The TOWN may, at reasonable times during the term hereof, inspect CONTRACTOR's facilities and perform such inspections, as the TOWN deems reasonably necessary, to determine whether the services required to be provided by CONTRACTOR under this Agreement conform to the terms of this Agreement. CONTRACTOR shall make available to the TOWN all reasonable facilities and assistance to facilitate the performance of inspections by the TOWN's representatives.

## **SECTION 24. WARRANTIES OF CONTRACTOR**

The CONTRACTOR hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary to perform the Services.

## **SECTION 25. PUBLIC RECORDS**

CONTRACTOR understands that the public shall have access, at all reasonable times, to all documents and information pertaining to TOWN contracts, subject to the provision of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosure under applicable law. CONTRACTOR's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the TOWN.

## **SECTION 26. NO CONTINGENT FEES**

The CONTRACTOR (for all services secured pursuant to CCNA, Chapter 287.055, Florida Statutes) warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the TOWN shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

## **SECTION 27. GOVERNING LAW; CONSENT TO JURISDICTION**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue of any action to enforce this Agreement shall be in Miami-Dade County, Florida.

## **SECTION 28. HEADINGS**

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

## **SECTION 29. SEVERABILITY**



If any provision of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

#### **SECTION 30. CONFLICT**

In the event of a conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall prevail.

#### **SECTION 31. BINDING AUTHORITY**

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

#### **SECTION 32. SURVIVAL OF PROVISIONS**

Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.

#### **SECTION 33. ENTIRE AGREEMENT**

**33.1** This Agreement and its attachments constitute the entire agreement between CONTRACTOR and TOWN, and all negotiations and oral understandings between the parties are merged herein.

**33.2** No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

#### **SECTION 34. WAIVER**

The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.

#### **SECTION 35. CONTENT OF THE REQUEST FOR PROPOSAL**

The content of relevant provisions of the Request for Qualifications (RFQ) are hereby incorporated by reference into this Agreement and is attached as Exhibit "B."

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for Professional Services Agreement on the respective dates under each signature: Town of Surfside through its Town Commission, signing by and through its mayor, authorized to execute same by Commission action on the 18<sup>th</sup> day of Nov, 2007; and Dennis J. Giordano authorized to execute same.

ATTEST:

[Signature]  
\_\_\_\_\_  
Town Clerk

TOWN OF SURFSIDE, through its  
Town Commission

By: [Signature] \_\_\_\_\_, Mayor  
27<sup>th</sup> day of November, 2007

Approved as to form and legality by  
Office of the Town Attorney

By: [Signature] \_\_\_\_\_, Town Attorney  
27 day of Nov, 2007

\_\_\_\_\_, Town Manager

27<sup>th</sup> day of November, 2007

(TOWN SEAL)

CALVIN, GIORDANO & ASSOCIATES,  
INC., a Florida corporation

Witness:

By: \_\_\_\_\_  
Dennis J. Giordano, President

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name